

RECEIVED

2003 MAR -6 AM 10:34

PUBLIC EMPLOYMENT
RELATIONS BOARD

FACT FINDING

JOHNSON COUNTY SHERIFF,)

)

Employer,)

)

and)

)

Iowa PERB Case CEO # 1083/3

PUBLIC, PROFESSIONAL & MAINTENANCE EMPLOYEES, Local 2003,)

)

)

Union.)

)

Appearances:

For the Employer: Judith Perkins, Collective Bargaining Representative; Lora Shrumek, Human Resources Administrator; Keith Slaughter, Chief Deputy Sheriff; Dave Wagner, Jail Administrator, and Gayle Svatos, Captain, Civil Division.

For the Union: Joe Rasmussen, Business Representative; Shelly Smith, Control Center Operator; Daniel Vincent, Mark Prentice and Greg Richards, Deputy Sheriffs.

Procedural History:

The Union was certified by the Iowa Public Employment Relations Board as bargaining agent for the Johnson County Sheriff's Department December 30, 1997. Since then the first and second annual contract negotiations went to fact finding and arbitration under the provisions of the Iowa Public Employment Relations Act, Chapter 20 of the Iowa Code. The next two contracts settled. Now this, the fifth proposed contract between the parties, is at impasse upon five specific issues. I was selected by the parties to serve as neutral fact finder under Chapter 20 and the issues at impasse were brought on for public hearing in fact finding at Iowa City, Iowa February 18, 2003.

This fact finding does not reflect a dispute as to the entire contract package, as to most of which the parties are in agreement. At impasse going into the fact finding hearing were just five

discrete issues:

1. Hours of Work (the Union seeks two language changes)
2. Health Insurance (both sides seek changes)
3. Wages (the Union seeks 2% increase July 1st and another 2% January 1st; it also seeks a \$1.00 an hour increase for the Control Center Control Operator/Matron, to eliminate a specific alleged inequity. The Employer offers a single 2.75% across the board increase).
4. Shift Differential (the contract does not now provide one; the Union desires to add a 25¢ differential for evening and night shifts), and
5. In-service Training (a language problem was resolved; see below)

The parties also agree that for purposes of this fact finding the following five Iowa counties are comparable to Johnson County: Black Hawk, Dubuque, Linn, Scott and Clinton. They are approximately the same size as Johnson county. Like Johnson county, they are located in Eastern Iowa. Like Johnson county, each contains one or more large cities and most contain major educational institutions. They will be discussed further below, as necessary.

1. Hours of Work:

1(a)

The Union seeks two different changes in Article 3, Hours of Work. The first would affect overtime. To **Article 3, Hours of Work** as it now reads, the Union wants to add a further subparagraph 3. Here is the existing provision, with the proposed addition set forth in bold face and italics:

3.01 WORK WEEK

- A. The work week shall begin at 12.01 a.m. Sunday and end at midnight Saturday. The normal work week for full-time employees shall consist of a monthly average of at least thirty-five (35) hours per week. The Employer shall post at least ten (10) days in advance the hours of work within each division setting the starting and ending time of each shift for each full-time employee for a calendar month. Except in emergency situations, fourteen (14) calendar days notice will be given to affected

employees of a change in the schedule of hours to be worked. Temporary schedule changes can not be made to avoid overtime. Part-time employees schedules shall be posted by Friday for the next work week.

B. All references to "days" used or accrued will be converted at the following rate for recording:

1. A 28 day accounting category assignment considers one day to equal 8½ hours (deputies, control center/matrons)
2. A 7 day accounting category assignment considers one day to equal 8 hours (dispatchers, non-control center civilian employees).
3. *A "day" for purposes of using paid leaves shall be twenty-four (24) hours, beginning with the start of the employee's regularly scheduled shift.*

The Union's argument for adoption of the boldfaced, italicized third subparagraph is that if a unit employee working evening or night shift elects to take a vacation day, Management requires the employee to report for work at midnight (or, I suppose, at the earliest time after midnight when that employee's next scheduled shift would begin) on the ground that the employee must report for work as soon as the new contractual "day" commences. The Union's contention is that the result is to force a unit employee to spend 24 hours' worth of leave time to gain only six or perhaps twelve hours of actual time off.

The Employer says that for scheduling purposes a day runs from 7:00 AM to 7 AM in the Jail and Patrol Divisions and from midnight to midnight in all other Divisions. It argues that approximately 500 individual days were granted in the past year, and the Union can point at most to only three instances where the problem it envisages actually occurred.

The draughtsmanship of the whole of article 3 depends upon underlying practices and concepts (e.g. "28 day accounting category" and "7 day accounting category") with which the parties may be wholly familiar but the fact finder is not. The consequence is to make the entire provision sufficiently opaque for it to be hard for a neutral to judge either the practical effect of the article as a whole or the effect of a change in it or addition to it. Thus while the meaning of the Union's proposed additional subparagraph 3 seems to me clear enough on its face, I have not a clue what either subparagraph 2 or subparagraph 1 of paragraph B means. I understand the Union's proposed addition to Paragraph 3.01(B), but I really have no idea what the whole of paragraph 3.01(B) means, except for the proposed addition.

The Employer does not dispute that the problem the Union describes can occur but claims only that it is infrequent. It does not claim that adoption of the proposed addition would be unduly costly, burdensome or difficult to administer.

Following this fact finding, the parties are free to adopt their own provision or no provision, or present the matter to an arbitrator to retain or strike. In the circumstances, I find that the Union's proposed addition is merited and I recommend its adoption.

1(b)

The second change the Union seeks to **Article 3, Hours of Work** is to modify § 3.02, **Shift Rotations**. The provision now reads

The Employer shall establish schedules for full-time employees based upon the rotations described below:

- A. Civil Division: 8.5 hour shifts Monday through Friday, except for one Saturday every third week will replace a week day.
- B. Detective Division: 42.5 hours per week Monday through Friday.
- C. Transport Division: 8.5 hour shifts Monday through Friday.
- D. Jail Division: 12 hour shifts; 2 on - 2 off - 3 on - 2 off- 2 on - 3 off.
- E. Patrol division: 9 hour shifts; 4 on - 2 off.
- F. Control Center: 9 hour shifts; 4 on - 2 off.
- G. Dispatch Division: 8 hour shifts, 4 on - 2 off.
- H. Clerical Division: 8 hour shifts, Monday through Friday.
- I. Kitchen Division: 8 hour shifts, 4 on - 1 off - 3 on - 2 off - 4 on 1 off - 4 on - 2 off.

The Union wishes to change the full time employee schedule for the Control Center (Line F) to 2 on - 2 off - 3 on - 2 off- 2 on - 3 off, making it identical to the schedule for the Jail Division (Line D). It is represented that the affected employees desire the change, and that, as the Control Center and the Jail Division work together in the same general area, having the same "teams" work the same hours would increase efficiency and cooperation.

The Employer objects, precisely on the ground that it does not wish to have the same individuals on Jail Division and Control Center regularly assigned to work together, for fear that they will develop a certain "team" loyalty that will have a deleterious effect on discipline.

I do not understand the Employer's contention that having the same individuals from Jail Division and Control Center work together will result in the creation of some kind of "team" spirit that will be destructive of discipline. It is nearly six decades since I served in the United States Army but, then and now, I have always understood that the development of a team spirit tends to enhance, not degrade, discipline.

As this consideration appears to be the Employer's only objection to the proposal, I will reject it and recommend adoption of the Union's demand.

2

2. Health Insurance:

Both sides desire change.

Under the existing contract, **Article 12, Insurance** contains § 12.02 providing:

12.02 Iowa 500

All Employees who select county health insurance shall be enrolled in the Blue Cross/Blue Shield Iowa 500 plan.

The Union desires to change this to read:

12.02 Iowa 500

All Employees who select county health insurance shall be enrolled in a policy equal to that in effect on July 1, 2002 (Wellmark Blue Cross-Blue Shield Iowa 500) with the addition of an Alliance Select overlay on July 1, 2003.

The Employer would change it to read:

All Employees who select county health care coverage shall be enrolled in the county's health care plan. Employee deductions will be taken from the

first two paychecks every month.

Effective July 1, 2003 health care rates for full-time benefit eligible employees will be paid by the employer. Part-time benefit eligible employees will be 50% employer paid and 50% employee paid. Health care coverage will consist of a Preferred Provider Organization (PPO) with 90% co-insurance for PPO providers and 80% / 20% co-insurance for non-PPO providers; \$100 single deductible and \$200 family deductible; \$500 single out-of-pocket maximum and \$1000 family out-of-pocket maximum.

The County's health care plan is in fact self-funded. The Employer states that the "Wellmark Blue Cross-Blue Shield Iowa 500" does not in fact exist, and has not for some time, but the existing coverage is coverage equivalent to that plan as it existed July 1, 2002.

The Union argues that the effect of its proposed language is to continue the present plan and coverage but allow the Employer "some relief from premium increases by placing an incentive to use a state-wide provider list on the current plan."

During the term of the existing agreement(s) the parties have had a joint committee on health insurance, which has met six times without achieving agreement.

In such circumstances, an outside fact finder is in no position to comparison shop for the parties among the available possible providers of health insurance. I cannot really evaluate the Union's claim that rephrasing the language of § 12.02 to refer to "a policy equal to that in effect on July 1, 2002 (Wellmark Blue Cross-Blue Shield Iowa 500)" (instead of the present language that simply says all employees "will be enrolled" in that plan). Far less can I know what the effect of adding the language "with the addition of an Alliance Select overlay on July 1, 2003" might be; nothing in the presentations tells me what an "Alliance Select overlay" is.

In the circumstances, I have no choice. I find and recommend that no change be made in § 12.02 of **Article 12, Insurance**.

3

3. Wages:

The Union wants an across-the-board 2% wage increase effective July 1, 2003 and a further across-the-board 2% wage increase effective January 1, 2004. In addition, it wants a one dollar an hour increase for the job classification of control center operator/matron.

The Employer offers a single 2.75% increase across the board and resists the demanded extra dollar an hour for the control center operator/matron.

The Employer argues, supported by available data, that its deputy sheriffs are the highest paid in the comparable group. On the Step increase schedule as it now stands, after seven years, a Johnson County Deputy Sheriff gets \$21.32 an hour. This is significantly above the Black Hawk County rate in the seventh year of \$18.04, or the Clinton County rate of \$18.30 in the seventh year. In Johnson County, with the Employer's proposed 2.75% increase, his or her rate would increase 59 cents to \$21.91. With the Union's proposed 2% increase on July 1 and 2% more the following January 1, his or her rate would increase 86 cents to \$22.18 .

Both sides refer me to the Consumer Price Index, but the Union claims it has increased by 2.4% and the Employer, by 1.6%. The Bureau of Labor Statistics CPI figures are easily available on the Internet, but do not without careful qualification exactly confirm either party and I am not free to conduct my own independent research. Clearly, there has been some increase.

The Employer does not contend that the Union's demands are beyond its financial capabilities, but only that they are not adequately supported by the statutory factors that are to be considered under Chapter 20.

All things considered, I see no reason why Johnson County should be ousted from its present position as leader, but it need not tower above all others. I consider and recommend that the new contract provide an across-the-board 1.75% wage increase effective July 1, 2003 and a further across-the-board 1.75% wage increase effective January 1, 2004. It will be noted that this amounts to a little more than a 3.5% increase over the one-year duration of the contract, as the 1.75% increase January 1, 2004 will be calculated on the increased rates then in effect.

With respect to the Union's demand for an additional dollar an hour increase in the rate for the control center operator/matron, the Employer points out that the rate for this classification received a 65 cents an hour increase in the last contract, in addition to the 2% across-the-board increase for all classifications. The record does not make clear why this job classification should

have lagged behind others, but the fact that in their last negotiation the parties singled it out for a unique 65 cent increase (over and above the across-the-board increase they negotiated) indicates that they recognized that -- for whatever reason -- it had so lagged. The Union points out that among the counties the parties agree are comparable, in the July 1, 2002 June 30, 2003 contract year only Clinton County, at \$13.20, paid less than the Johnson County rate of \$14.52 for this position, Lynn, Black Hawk and Dubuque Counties paying \$15.30, \$16.97 and \$16.92, respectively.

The Employer submitted written job descriptions to demonstrate that there are differences in the skills and responsibilities required of this position in the various comparable counties, but sterile written job descriptions are not really detailed enough to carry the day. It is apparent that female deputies will sometimes be needed to supervise the custody of female prisoners, and their pay rate should be commensurate.

In sum, I deem that the additional dollar an hour for the classification of control center operator/matron is appropriate, and I so find and recommend.

4. Shift Differential:

The contract does not now provide any shift differential. The Union desires to add a 25¢ per hour shift differential -- to be included also in the calculation of overtime rates and paid leave -- to the 2:00 pm to 10:00 pm shift and to the 10:00 pm to 6:00 am shifts.

The Union candidly acknowledges that it is not wedded to the 25¢ figure, but wants to establish the principal.

The Employer argues that employment in the Sheriff's Department is not and has never been a "nine to five" job and that employees bid for assignment to the day shift by seniority. Establishing a shift differential would diminish funds available for higher pay across-the-board.

Most of the counties the parties deem comparable have some kind of shift differential for some of their employees. Linn County has none for its deputies, 10 cents for second shift, 15

cents for third shift for dispatchers, and like amount for other employees on the noon to 6:00 PM shift and on the after 6:00 pm shifts, respectively. The Union, confusingly, reports Black Hawk County as paying deputies and dispatchers 40 cents for "2nd, 3rd and 4th" shifts (does Black Hawk County really have five shifts a day?) and 20 cents for other employees for the 2nd shift. Dubuque is reported to pay deputies (only) 30 cents an hour for shifts between 4:00 pm and 8:00 am and Clinton County 25 cents to deputies for shifts between 3:00 pm and 7:00 am, 20 cents to 2nd shift dispatchers and 25 cents to 3rd, and 25 cents to other employees for shifts between 3:00 pm and 7:00 am.

Ordinarily I do not think it appropriate for a neutral to initiate the installation of a new benefit. However, the Union complains that the Employer has flatly refused to discuss the question of shift differentials, notwithstanding it is clear that they prevail in similar employment in comparable counties. In the circumstances it seems to me appropriate to open the subject for negotiation by finding and recommending the installation of a small shift differential.

I therefore deem it appropriate for Employer to pay a ten cent shift differential to dispatchers and to other employees -- but not, for now, to deputies -- on the second and third shifts and I so find and recommend.

5

5. In service Training.

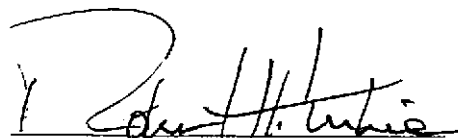
The parties were in agreement that a provision should be added to Article 14, In service Training. They differed only as to a few words at the end of the paragraph. During the Fact Finding hearing they resolved this difference and agreed upon the language to be added, as follows (the former disagreement is noted in a footnote):

The Employer shall provide at least 24 hours advance notice of cancellation of scheduled training which would occur on an employee's scheduled day off. Failure to provide 24 hours advanced notice will entitle the employee to report for 2 hours work at the scheduled training time to be compensated at the appropriate rate. In the alternative, the employee may elect, at the time of notification of the

cancellation of the training, to not report for work and not be compensated.¹

Date

March 4, 2003

A handwritten signature in dark ink, appearing to read "Robert H. Kubie", written over a horizontal line.

Robert H. Kubie, Fact Finder

¹An earlier version would have read, "to not report for work or be compensated." The purpose of the change was just remove any possible ambiguity; the parties agree if the employee elects not to report, he or she will not be paid.

CERTIFICATE OF SERVICE

Re: Johnson County Sheriff & PPME Local 2003,
Iowa PERB Fact Finding CEO # 1083/3 [JOH]

I certify that on March 4, 2003 I served my Fact Finding Report in the above and foregoing matter upon each of the parties thereto by faxing a copy to each at the fax numbers furnished me by them in the course of the Fact Finding Hearing and by also mailing one originally executed copy and one electrostatic copy to each of them at their record addresses.

I further certify that on the same day I mailed an electrostatic copy of the said Fact Finding Report to the Iowa Public Employment Relations Board 514 East Locust, Suite 202, Des Moines, Iowa, 50309.


Robert H. Kubie, Fact Finder

RECEIVED
2003 MAR -1 PM12:51
PUBLIC EMPLOYMENT
RELATIONS BOARD